MOTION FILED
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No. 94-766

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

EUGENE H. DUFFY, *et al.*,
Petitioners,

v.

JAMES W. WETZLER, *et al.*

On Petition for a Writ of Certiorari to the Supreme Court of New York Appellate Division-Second Judicial Department

MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* AND BRIEF *AMICI CURIAE* OF THE NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, THE MILITARY COALITION AND DESIGNATED FEDERAL RETIREES IN ARIZONA, NORTH CAROLINA, VIRGINIA AND WISCONSIN IN SUPPORT OF PETITIONERS

MICHAEL J. KATOR *
STEPHEN Z. CHERTKOF
KATOR, SCOTT & HELLER
1275 K Street, N.W.
Suite 950
Washington, D.C. 20005-4006
(202) 898-4800

December 9, 1994

* Counsel of Record

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The National Association of Retired Federal Employees ("NARFE"), the Military Coalition and designated federal retirees in Arizona, North Carolina, Virginia and Wisconsin move for leave to file a brief *amici curiae* in support of petitioners. Counsel for respondents refused to consent to the filing of this brief.

NARFE is a nonprofit incorporated association having its principal place of business in Washington, D.C. From its original fourteen charter members, NARFE has grown to a membership of approximately a half a million federal annuitants (retirees and survivors) living throughout the Nation and in various foreign countries. NARFE has been a major advocate in maintaining the integrity of the federal government's civilian retirement systems and it has been directly involved, through lobbying and related ac-

tivities, in all legislative and executive changes in these systems over the past six decades.

While NARFE principally focuses on legislative and administrative issues affecting federal retirees, on a handful of occasions, either directly or as *amicus,* NARFE has been involved in litigation in this Court. Most recently, NARFE has been involved in the litigation emanating from the states' discriminatory taxation of federal retirement benefits. Because this discriminatory taxation practice was widespread, NARFE participated as *amicus* in *Davis v. Michigan Department of Treasury,* 489 U.S. 803 (1989). Similarly, NARFE members brought the case of *Harper v. Virginia Department of Taxation,* 113 S. Ct. 2510 (1993), which challenged states' reliance on nonretroactive decisionmaking to deny refunds to federal retirees who had paid the taxes invalidated by *Davis.* NARFE also participated as an *amicus* in the recently-decided case of *Reich v. Collins,* No. 93-908 (Dec. 6, 1994).

This case raises questions virtually identical to those posed in *Reich*: whether the Fourteenth Amendment prohibits states from constantly shuffling and reshuffling the remedies that putatively are available to vindicate unconstitutional state taxation. The majority of the 23 states that imposed *Davis*-type taxes have now refunded (or agreed to refund) those taxes to the federal retirees. Several states, however, are continuing their efforts to avoid their obligations to refund the taxes they unconstitutionally imposed on federal retirees. NARFE and its members in these remaining states are vitally interested in seeing that this litigation is finally put to rest and that refunds are finally paid. Moreover, because the issues raised in this petition affect the ability to recoup all types of unlawful taxes, NARFE and its members nationwide are interested in assuring that states cannot stack the deck against them and other taxpayers who seek refunds of erroneously or unlawfully collected taxes.

The Military Coalition is a voluntary association of 25 military-related organizations that was formed six years ago. Collectively, its constituent organizations represent the interests of almost two million members who are retired, reserve and active members of the Uniformed Services of the United States. The Military Coalition is dedicated to providing a cohesive means for the study and advocacy of issues impacting upon the maintenance of a strong national defense and the preservation of rights and benefits its varied constituents have earned through years of dedicated service to the United States.

Resolution of the issues presented in this petition are of vital interest to the Military Coalition and the members of its constituent organizations. Not only do some of these members live in states where *Davis* litigation is ongoing, but all its members are interested in seeing a fair and evenhanded mechanism for challenging unconstitutional state taxation.

The designated federal retirees in Arizona, North Carolina, Virginia and Wisconsin are all class representatives of suits in their respective states seeking relief for the unconstitutional imposition of taxes on their federal pensions, or the failure to refund such taxes. While partial resolution of the *Davis* litigation has been announced or implemented in some of these states, nonetheless until all the remaining issues in these states are finally resolved, these class representatives will remain interested in all the legal issues arising out of the *Davis* litigation.

For these reasons, *amici* desire to have their voices heard in this case. This is not a case that simply involves one state or presents one isolated issue. The ramifications of the decision below are widespread and there are over two and a half million individuals who are interested in seeing that that decision is reviewed and reversed. Accordingly, pursuant to Rule 37.2, *amici* move for leave to file this brief in support of petitioners.

Respectfully submitted,

MICHAEL J. KATOR *
STEPHEN Z. CHERTKOF
KATOR, SCOTT & HELLER
1275 K Street, N.W.
Suite 950
Washington, D.C. 20005-4006
(202) 898-4800

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* Counsel of Record

QUESTION PRESENTED

Whether the Fourteenth Amendment prohibits states from constantly shuffling and reshuffling the remedies that putatively are available to vindicate unconstitutional state taxation.

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BRIEF *AMICI CURIAE* OF THE NATIONAL ASSOCIATION OF RETIRED FEDERAL EMPLOYEES, THE MILITARY COALITION AND DESIGNATED FEDERAL RETIREES IN ARIZONA, NORTH CAROLINA, VIRGINIA AND WISCONSIN IN SUPPORT OF PETITIONERS

The National Association of Retired Federal Employees ("NARFE"), the Military Coalition and designated federal retirees in Arizona, North Carolina, Virginia and Wisconsin file this brief *amici curiae* in support of petitioners and urge this Court to grant the petition for a writ of certiorari and vacate and remand the decision of the court below.

INTEREST OF *AMICI*

Amici are NARFE, the Military Coalition and designated federal retirees in Arizona, North Carolina, Virginia and Wisconsin. NARFE is a not for profit corporation

that is dedicated to serving and protecting the interests of federal civil service retirees and the federal retirement systems. As more fully set out in the foregoing motion, NARFE and its members are vitally interested in the issue of taxpayers' entitlement to receive refunds of unconstitutional state taxation.

The Military Coalition is a voluntary association of 25 military-related organizations that was formed six years ago. *See* App. A at 1a-8a (providing a listing of its component organizations). Collectively, its constituent organizations represent the interests of almost two million members who are retired, reserve and active members of the Uniformed Services of the United States. As more fully stated in the preceding motion, the Military Coalition is dedicated to providing a cohesive means for the study and advocacy of issue impacting upon the maintenance of a strong national defense and the preservation of rights and benefits its varied constituents have earned through years of dedicated service to the United States. It and the members of its constituent organizations are affected directly by the decision below.

The designated federal retirees in Arizona, North Carolina, Virginia and Wisconsin are all class representatives of suits in their respective states seeking relief for the unconstitutional imposition of taxes on their federal pensions, or the failure to refund such taxes. *See* Appendix A at 8a-9a (listing individual class representatives). They, or litigants from their states, have previously appeared in this Court as parties seeking the same or similar relief.

STATEMENT

This case is but the latest in a steady stream of cases coming to this Court challenging a state's refusal to fully refund taxes imposed on federal retirees in violation of 4 U.S.C. § 111. After this Court decided *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989), some states immediately refunded these unconstitutional taxes.

See, e.g., Hackman v. Director of Revenue, 771 S.W.2d 77 (Mo. 1989), *cert. denied*, 493 U.S. 1019 (1990); *Burns v. New Mexico*, No. SF 89-1314(c) (1st Jud. Dist. Sante Fe County Apr. 5, 1990). The remaining states dug in; although many have since capitulated, today, over five and a half years after this Court decided *Davis*, and a year and a half after this Court decided *Harper v. Virginia Department of Taxation*, 113 S. Ct. 2510 (1993), the states' war of attrition against the federal retirees continues in more than half a dozen states.[1]

The states' war of attrition has been fought on several fronts. First and foremost, the states sought to rely on nonretroactive decisionmaking to deny refunds, but the nonretroactivity defense was finally laid to rest in *Harper v. Virginia Department of Taxation*, 113 S. Ct. 2510 (1993). Several states also sought to distinguish between military and civil service retirees, contending that there were "significant differences" between military retirees and state government retirees justifying the discriminatory taxation. This effort was thwarted by this Court's decision in *Barker v. Kansas*, 112 S. Ct. 1619 (1992). Most states got the message from *Barker* and *Harper* and ended their litigation thereafter.[2] The stalwart few, however, simply

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[1] On December 6, 1994, this Court reversed the Supreme Court of Georgia in *Reich v. Collins*, U.S. No. 93-908, thereby (presumably) ending the litigation in Georgia. In addition to the present case out of New York, North Carolina has a petition pending in this Court. *Swanson v. North Carolina*, U.S. No. 93-1882. Litigation is ongoing on remand in *Harper*, Record No. 940326 (Supreme Court of Va.); in Kentucky, *Commonwealth of Kentucky Revenue Cabinet v. Gossum*, Nos. 92-SC-001041-TG, 94-SC-216 TX (Ky. Sep. 1, 1994) (state's petition for rehearing pending); Wisconsin, *Department of Revenue v. Hogan*, Case No. 93-CV-2532 (Cir. Ct. Dane Cty.); Arizona, *Bohn v. Waddell*, No. 1 CA-TX, 94-009 (Ariz. Ct. App.); and Oregon, *Dixon v. Oregon*, No. 9311-07480 (Cir. Ct. Multnomah Cty.).

[2] *See, e.g., Pledger v. Bosnick*, 113 S. Ct. 3034 (1993); *Strelecki v. Oklahoma Tax Commission*, 872 P.2d 910 (Okla. 1993); *Brumley*

retooled. Like Georgia, they focused their efforts on showing that their states provided adequate predeprivation remedies sufficient to obviate the need for postdeprivation relief. The State of New York and New York City were among those adopting this post-*Harper* line of defense.

New York hewed this line for exactly a year after this Court remanded this case for further consideration in light of *Harper*. Then, on June 27, 1994, New York's Governor capitulated: he anounced that New York should honor all federal retirees' timely-filed refund claims. In an extraordinary sequence of events, the New York courts held that this unilateral action rendered moot all of petitioners' claims, including those for class-wide relief and for relief under 42 U.S.C. §§ 1983 and 1988. Significantly, the court below made this ruling before any claims were actually paid. And, while New York represented to the court below that it would be refunding $62 million of unconstitutionally assessed taxes, in fact it has refunded only half that much. Petitioners' applications and writ of certiorari in this Court followed.

REASONS FOR GRANTING THE PETITION

This case raises questions of substantial public importance concerning the propriety of states retaining taxes collected in violation of the Constitution and statutes of the United States. Like *Reich*, and like *Swanson v. Powers*, this case is but a minor variation of the recurring theme of the states nullifying constitutionally protected rights by manipulating the state remedies available to protect those rights. The court below has sanctioned the facile orchestration of state law to deprive a large segment of the federal retiree class the same relief the State and New York City grudgingly, and belatedly, had conceded

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v. Utah Tax Commission, 868 P.2d 796 (Utah 1993); *Hagge v. Iowa Department of Revenue*, 504 N.W. 2d 448 (Iowa 1993); *Bass v. South Carolina*, 113 S. Ct. 3025 (1993); *Sheehy v. Montana*, 113 S. Ct. 3025 (1993); *Marx v. Broom*, 632 So.2d 1315 (Miss. 1994).

is their due. Review by this Court is necessary to assure that the mandate of *Reich* is heeded in New York and in each state in which *Davis* litigation is extant.

1. In *Reich*, this Court unanimously rebuffed Georgia's attempt to deny federal retirees relief from the unconstitutional taxes imposed upon them. The Court held that states may not

> hold out what plainly appears to be a "clear and certain" postdeprivation remedy and then declare, only after the disputed taxes have been paid, that no such remedy exists.

Reich v. Collins, No. 93-908, slip op. at 1. This holding should be broad enough to resolve all the remaining *Davis* cases: central to each of those cases is a variation of the same "bait and switch" this Court condemned in *Reich*. *Id.*, slip op. at 4.

This case is in many ways indistinguishable from *Reich*. Indeed, it may be that this case is but the next generation of *Reich*. Perhaps foreseeing this Court's decision in *Reich*, New York refined its strategy: rather than rely on manipulation of preexisting law to avoid liability altogether, New York "reconfigure[d] its scheme, unfairly, in *midcourse*" [3] merely to *limit* its liability. But this effort too must fail, for New York has limited its liability only by denying relief to some but not all of the federal retiree class. That is, while New York is providing adequate relief to a relative handful of retirees, it is treating those retirees to whom it is denying relief just as Georgia treated Colonel Reich.

Throughout the course of this litigation, New York has espoused a variety of contradictory positions, adapting its stance to the exigencies of the moment without consideration of the positions it had previously taken. *See* Pet. at 10-11 (stating New York's "top ten" list of changing

[3] *Reich*, slip op. at 4.

positions). The net effect of this pliability is that New York's game of "bait and switch" has succeeded in depriving a large segment of the federal retiree class of "meaningful backward-looking" relief.

For example, New York officials publicly stated that retirees need not take any steps to protect their refund rights; that if refunds were paid they would be paid to all federal retirees. Pet. at 10. Now, however, contrary to this statement, refunds are being paid only to those federal retirees who timely filed refund claims. Similarly, while New York had previously taken the position that a refund claim for any year would be treated as a claim for all years open under the statute of limitations, it is now refusing to apply its own settled law, instead holding federal retirees to a rigorous and unprecedented requirement that they file separate claims for each tax year.

That is, until this case, informal refund claims were acceptable so long as the state was fairly put on notice of the nature of the claim. Indeed, case law established that notice to the state was adequate even where the facts were provided by another similarly situated taxpayer. *In re Crispo,* WESTLAW: 1994 WL 268092 (N.Y.Div.Tax. App.), at *3. There is no doubt in this case that the state was on fair notice of the refund claims at issue, if for no other reason than the filing of $32 million of "adequate" claims. *Id.* Moreover, the state's representation to the court below that there were $62 million worth of refund claims at issue was predicated on a precise understanding of how much was owed and to whom.

Rather than pay these retirees what they were admittedly owed, the state formulated a new technical barrier to limit its liability.[4] Georgia tried this gambit to

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[4] New York law allows a three year statute of limitations for filing of a "[c]laim for credit or refund" and specifically references the Internal Revenue Code for definition of terms. *See* Pet. at 47a. Federal law, like New York law, imposes no formal requirement on the form of a refund claim and allows for liberal amendment

avoid liability, and this Court firmly upbraided it for doing so. New York's gambit is no more tolerable simply because it is designed merely to halve its liability rather than eliminate it. Accordingly, this Court should grant the petition, vacate the decision of the court below and remand it for further consideration in light of *Reich*.

2. New York played the *Reich* game in its treatment of petitioners' § 1983 claims, but with a twist: instead of changing the rules midcourse, it simply ignored them. First, the court below ignored this Court's mandate to reconsider its prior decision in light of *Harper*. The court below utterly failed to reconsider the § 1983 claims. *See* Pet. at 4a. While this defiance is reason enough to reverse the decision below, just as significantly, the lower court's dismissal of petitioners' § 1983 claims is completely contrary to established federal law.

Foremost, petitioners raised a § 1983 claim against the City of New York. The court below dismissed this claim because it found that neither the City nor any of its officials were responsible for enforcing the tax. Pet. at 34a, 22a (holding that the § 1983 claim was defeated by qualified immunity). Yet as the City ultimately conceded, qualified immunity is simply unavailable as a defense to a § 1983 action against a municipality. *Owen v. City of Independence*, 445 U.S. 662, 638 (1980); *American Trucking Assns. v. Smith*, 496 U.S. 167, 185 (1990). Petitioners' § 1983 claim against New York City is the paradigm claim—neither nonretroactivity (*Owen*, 445 U.S. at 655) nor qualified immunity provided any basis to absolve the City of its liability for its denying

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of any claim, even after the controlling statute of limitations has run. *United States v. Kales*, 314 U.S. 186 (1941). Thus, for example, a federal retiree's May 1989 claim seeking a refund for "all taxes imposed in violation of *Davis*" would orinarily be sufficient to state a claim for a refund of all taxes paid in 1986 and thereafter. For purposes of this case, however, New York has taken the position that such a claim would be sufficient to state a claim for a refund of 1986 taxes only.

the federal retirees rights protected by federal law. In failing to hold the City liable, the court below simply flouted controlling federal law.

Moreover, the court below erred in dismissing petitioners' § 1983 claims against the State officials. Even apart from this Court's mandate to reconsider the § 1983 claims, the court below was required to consider *all* relevant precedents, including intervening precedents, in determining these claims. *Elder v. Holloway*, 114 S. Ct. 1019, 1021 (1994). Yet the court below failed to apply *Hafer v. Melo*, 502 U.S. 21, 112 S. Ct. 358, 362-63 (1991) (holding that state officials may be held individually liable for acts performed in the course of their official duties); *Collins v. City of Harker Heights*, 112 S. Ct. 1061, 1065 (1992) (§ 1983 does not require proof "of an abuse of governmental power separate and apart from the proof of a constitutional violation"); and *Buckley v. Fitzsimmons*, 113 S. Ct. 2606, 2620 (1993)) (Scalia, J., concurring) (state officials bear the "burden of showing that the conduct for which [they seek] immunity would have been privileged at common law in 1871."). Moreover, the court below failed to recognize that the State officials had waived whatever immunity they might otherwise have enjoyed. That is, the State officials averred that they acted without discretion in violating the federal retirees' rights. Qualified immunity, however, only insulates officials who are exercising discretionary functions. *Westfall v. Erwin*, 484 U.S. 292, 298 n.4 (1988).

By ignoring this Court's municipal liability and personal capacity decisions, the court below has created a § 1983 jurisprudence all its own. In so doing, New York, like Georgia and Virginia, has transformed taxpayer remedies into a shell game of now-you-see it, now-you-don't and precedent into cheesecloth. The decision below is unsustainable and, accordingly, this Court should grant, vacate and remand for consideration of *Reich* as well as this Court's recent § 1983 decisions.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari to the Supreme Court of New York, Appellate Division, should be granted and its decision vacated and remanded in light of *Reich*.

Respectfully submitted,

MICHAEL J. KATOR *
STEPHEN Z. CHERTKOF
KATOR, SCOTT & HELLER
1275 K Street, N.W.
Suite 950
Washington, D.C. 20005-4006
(202) 898-4800

December 9, 1994

* Counsel of Record

APPENDIX

APPENDIX A

MEMBERS OF THE MILITARY COALITION

THE RETIRED OFFICERS ASSOCIATION (TROA)

The Retired Officers Association was founded in 1929 and has approximately 395,000 members. Membership in the Association is open to all past and present, active, reserve and retired commissioned and warrant officers in any of the seven uniformed services. The organization's mission is to support strong national defense and to represent membership on retirement and benefit issues before Congress.

AIR FORCE ASSOCIATION (AFA)

The Air Force Association was founded in 1946 and has approximately 200,000 members. Membership is open to anyone who has served in the U.S. armed forces. Other American citizens may affiliate as patrons. The organization's mission is to promote public understanding of aerospace issues and national security requirements to ensure strong support of the nation's defense and the men and women who serve in the U.S. Air Force.

AIR FORCE SERGEANTS ASSOCIATION (AFSA)

The Air Force Sergeants Association was founded in 1961. It has approximately 165,000 members and is composed of active and retired enlisted personnel in the Air Force, Air National Guard, Air Force Reserve, Army Air Corps and Army Air Force. Its members belong to 198 chapters throughout the world and the purpose of the organization is to serve as the voice of Air Force enlisted service members.

ASSOCIATION OF MILITARY SURGEONS OF THE UNITED STATES

The Association of Military Surgeons of the United States received its Congressional Charter in 1908. Its

membership consists of 17,000 members and is open to all past and present commissioned officers or GS-9 and above civilians in the medical services of the United States Air Force, the United States Air Force Reserve, the United States Army, the United States Army Reserve, the Air National Guard, the Army National Guard, the United States Public Health Service and the Veterans' Administration; officers of military medical services of other nations; and past and present medical consultants to the chiefs of the federal medical services. The purpose of the Association is to improve the nation's federal health care system.

ASSOCIATION OF U.S. ARMY (AUSA)

The Association of U.S. Army was founded in 1950 and has approximately 135,000 individual and 250 industrial members. Membership is open to all active, reserve and civilian personnel in the Army, and any person subscribing to the association's bylaws. The purpose of the organization is to foster public understanding and support of the Army and the people who serve in it.

CHIEF WARRANT AND WARRANT OFFICERS ASSOCIATION, U.S. COAST GUARD (CW & WOA)

The Chief Warrant and Warrant Officer's Association was founded in 1929 and has approximately 3,300 members. Membership is open to active duty, reserve and retired Coast Guard warrant and chief warrant officers. The association's purpose is to advance members' professional abilities.

COMMISSIONED OFFICERS ASSOCIATION OF THE U.S. PUBLIC HEALTH SERVICE, INC. (COA)

The Commissioned Officers Association of the U.S. Publis Health Service was founded in 1937 and has approximately 7,500 members. Membership is open to ac-

tive duty, retired, inactive reserve and former commissioned officers of the U.S. Public Health Service. The purpose of the organization is to ensure that the interests and welfare of commissioned officers of the USPHS are protected.

ENLISTED ASSOCIATION OF THE NATIONAL GUARD OF THE U.S. (EANGUS)

The Enlisted Association of the National Guard of the U.S. was founded in 1962 and has approximately 67,000 members. Membership is open to enlisted members of the National Guard through state associations and associate membership is open to all individuals through state associations. The purpose of the association is to promote and maintain adequate national security; and to foster the status, welfare and professionalism of enlisted members of the National Guard.

FLEET RESERVE ASSOCIATION (FRA)

The Fleet Reserve Association was founded in 1922. It has approximately 170,000 members who are active duty, retired enlisted personnel and commissioned officers with prior service in the Navy, Marine Corps and Coast Guard. The Association is chartered under the laws of Pennsylvania and its purpose is to represent its members on military personnel legislative matters before Congress.

MARINE CORPS LEAGUE (MCL)

The Marine Corps League was founded in 1923 and has approximately 40,000 members. Membership is open to those who served in the Marine Corps. The organization's mission is to preserve the traditions, to promote the interests of the Marine Corps, to voluntarily aid and render assistance to all Marines and former Marines, as well as to their widows and orphans.

MARINE CORPS RESERVE OFFICERS ASSOCIATION (MCROA)

The Marine Corps Reserve Officers Association was founded in 1928 and has approximately 5,700 members. Membership is open to all Marine officers and officers of other U.S. services who served with Marines. The association's mission is to support and strengthen the Marine Corps, its reserve and reserve officers.

NATIONAL ASSOCIATION FOR UNIFORMED SERVICES/SOCIETY OF MILITARY WIDOWS (NAUS/SMW)

The National Association for Uniformed Services/ Society of Military Widows was founded in 1968 and has approximately 155,000 members. NAUS/SWM membership is open to all active, retired and former members of the uniformed services, their families and survivors. The association's mission is to represent members' interests by supporting legislation that upholds the security of the United States, sustains the morale of the uniformed services and provides fair and equitable consideration for all.

NATIONAL GUARD ASSOCIATION OF THE UNITED STATES (NGAUS)

The National Guard Association of the U.S. was founded in 1878 and has approximately 54,000 members. membership is open to all present and former officers of the Army and Air National Guard, corporate and individudal associate membership. The association's mission is to improve the readiness of the National Guard and to provide personnel benefits and entitlements for the half million members of the National Guard.

NATIONAL MILITARY FAMILY ASSOCIATION (NMFA)

The National Military Family Association was founded in 1969 and has approximately 10,000 members. Mem-

bership is open to active duty, retired and reserve component members of the seven uniformed services and their family members. The association's mission is to serve as an advocate for uniformed service families and to educate and inform them concerning issues affecting their lives.

NAVAL ENLISTED RESERVE ASSOCIATION (NERA)

The Naval Enlisted Reserve Association was founded in 1957. It has 15,000 members and its membership is open to active, inactive, and retired enlisted reservists in the Navy, Marine Corps and Coast Guard. The Association's mission is to focus on members' interests, morale and well-being, and readiness and training of sea service reserve forces.

NAVAL RESERVE ASSOCIATION (NRA)

The Naval Reserve Association was founded in 1954 and consists of 25,000 members. Membership in the Naval Reserve Association is open to active, inactive and retired Naval Reserve officers and its purpose is to maintain and strengthen the nation's defense by ensuring a continued strong Navy and Naval Reserve.

NAVY LEAGUE OF THE UNITED STATES (NLUS)

The Navy League of the United States was founded in 1902 and has approximately 68,000 members. Membership is open to civilians, military reservists and retirees. The league's mission is to maintain a strong U.S. maritime posture through support of the Navy, Marine Corps, Coast Guard and Merchant Marine.

NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES (NCOA)

The Non Commissioned Officers Association of the United States is a patriotic, civic and fraternal organization operating under Texas Corporate Charter. The Association was founded in 1969 and has more than 160,000 retired or veterans of the United States armed forces in the grades E-4 thru E-9. The purpose of the Association is to promote and protect the rights and benefits of active duty and veteran non commissioned officers and petty officers in all five branches of the armed forces and provide opportunities for them to join in patriotic, fraternal, social and benevolent activities.

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES (ROA)

The Reserve Officers Association of the United States was organized in 1922, and chartered by Congress in June 1950. Originally, the Reserve Officers Association consisted solely of Army Officers, Reserve Officers, National Guard Officers, and Retired Officers. Following World War II, the Reserve Officers Association expanded its membership to all services and it now has approximately 100,000 members. The purpose of the Association is to ensure an adequate total force of all services including both active and reserve components, and a force that is mobilization ready to meet any contingency.

THE JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA (JWV)

The Jewish War Veterans of the United States was founded in 1896 and has approximately 100,000 members. Membership is open to veterans of war time service of the Jewish faith. The organization's mission is service to veterans, Americanism, and to provide a voice on the Hill for veterans' legislation and benefits.

THE MILITARY CHAPLAINS ASSOCIATION (MCA)

The Military Chaplains Association was founded in 1925 and chartered by the 81st Congress in 1950. It has approximately 1,300 members. Membership is open to all chaplains of the Army, Navy, Air Force, VA and Civil Air Patrol, active duty, reserve, retired and former. The organization's mission is to safeguard and strengthen the forces of faith and morality of our nation; to perpetuate and to deepen the bonds of understanding and friendship in our military services; to preserve spiritual influence and interest in all members and veterans of the armed forces; to uphold the Constitution of the United States; and to promote justice, peace and goodwill.

THE RETIRED ENLISTED ASSOCIATION (TREA)

The Retired Enlisted Association was founded in 1968 and consists of 68,000 members. Its membership is made up of enlisted retirees from all branches of the armed services and their surviving spouses. The mission of the association is to represent retired enlisted personnel and protect retiree military benefits.

U.S. ARMY WARRANT OFFICERS ASSOCIATION (USAWOA)

The U.S. Army Warrant Officers Association was founded in 1973 and has 9,000 members. Its members consist of National Guard active duty, reserve and retired Army warrant officers. The purpose of the association is to recommend improvement of the Army, and promote technical and professional information among warrant officers.

U.S. COAST GUARD CHIEF PETTY OFFICERS ASSOCIATION (CPOA)

The U.S. Coast Guard Chief Petty Officers Association was founded in 1969. Its 11,600 members are active, retired, and reserve Coast Guard chief petty officers. The mission of the association is to promote the welfare of chief petty officers, to promote and protect the rights and benefits of all armed forces personnel and aid in Coast Guard recruiting.

UNITED ARMED FORCES ASSOCIATION (UAFA)

The United Armed Forces Association was founded in 1986 and has approximately 15,760 members. Formed to serve all ranks and branches of the Armed Forces, Veterans, Civil Service, active and retired and their dependents, the association's purpose is to promote the social, political, and economical welfare of its members.

ARIZONA *AMICI*

The litigants are the Estate of John L. Bohn, Shirley Bohn, Donald and Mary Rutan, Carl Linton, Arthur Abbott, who are retired federal employees, their estates or personal representatives; and, under the doctrine of virtual representation, the class of approximately 65,000 other retired federal employees, their estates and personal representatives. *Bohn v. Waddell,* No. 1 (A-TX, 94 — ——— (Ariz. Ct. App.) (Bohn II).

NORTH CAROLINA *AMICI*

North Carolina *amici* are Norman W. Swanson and 393 other named Class A petitioners and seven named Class B petitioners who represent the certified class of federal retirees who have been unconstitutionally taxed by the State of North Carolina and whose petition is pending before this Court in No. 93-1882.

VIRGINIA *AMICI*

The palintiffs in *McClelland v. Payne*, No. 94-2084 (4th Cir.), include:

JOHN F. MCCLELLAN;
THOMAS B. WORSLEY; and
CHRISTOPHER J. GIAIMO,

for themselves individually and for all other similarly situated as representatives on behalf of a putative class of approximately 185,000 similarly situated civilian and military annuitants of the federal government whose federal pensions were subject of taxation by Virginia.

WISCONSIN *AMICI*

J. Gerard Hogan, on behalf of himself and as representative of the certified taxpayer class in *Wisconsin Department of Revenue v. Hogan*, No. 93-CV-2549 *et al., pet. for rev. pend'g*, Cir. Ct. Dane Cty.